

The Hon. John C. Coughenour

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

PUYALLUP TRIBE OF INDIANS,

Plaintiffs,

v.

ELECTRON HYDRO, LLC and THOM A.
FISCHER,

Defendants.

)
) Case No. 2:20-cv-01864

)
) [PROPOSED] STIPULATED ORDER ON
) MOTION FOR CONTEMPT

BACKGROUND

This matter comes before the Court on Plaintiff Puyallup Tribe of Indians’ (“Tribe’s”) Motion for Contempt concerning this Court’s order of February 16, 2024, Dkt. No. 78 (the “Remedies Order”). The Remedies Order required Defendants (collectively “Electron”) to remove a substantial portion of their rock dam and metal sheet pile wall (the “rock dam/spillway”) in the Puyallup River by complying with the Tribe’s removal plan “or a comparable analogue,” and to apply for the permits necessary to ensure the work be completed this summer. Dkt. No. 78. Electron applied for permits for what it identified as a “comparable analogue” for removal of the rock dam/spillway, but was informed by permitting agencies its

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1 application could not be permitted in time for the work to occur in the summer of 2024. Dkt. No.
 2 90, Ex. C-E. The Tribe filed a Motion for Contempt, Dkt. No. 89, which Electron disputed, Dkt.
 3 No. 94. The Court set the Motion for Contempt for evidentiary hearing April 18, 2024, Dkt. No.
 4 101, and the hearing has been continued to April 26, 2024 to give the parties time to work toward
 5 a resolution of issues presented in the Motion for Contempt. Dkt. No. 102. The parties have met
 6 and now present to the Court this Stipulated Order, with attachments, to supplement and clarify
 7 the February 16, 2024 Remedies Order's provision for a "comparable analogue" to the Tribe's
 8 proposal for removal of the rock dam/spillway, that Electron agrees will be adequately protective
 9 of Electron's structures.

10 STIPULATED ORDER

11 NOW, THEREFORE, based upon the proposed stipulated order of the parties and the
 12 attachments hereto, and pleadings, record, and file herein, IT IS HEREBY ORDERED the
 13 Remedies Order, Dkt. No. 78, is supplemented as follows:

- 14 • No later than noon Pacific Daylight Time on Tuesday, April 30, 2024, Electron shall
 15 submit to the Army Corps of Engineers and all other regulatory and permitting agencies
 16 with jurisdiction over the rock dam/spillway removal, a permit application providing for
 17 the removal of the rock dam/spillway during the time period of July 15 through
 18 September 15, 2024 which includes all of the following detail and which conforms to
 19 Attachments A through C to this Order:
 - 20 ○ The sheet pile wall currently located near the Electron Diversion intake at the
 21 upstream end of the rock dam/spillway channel will be removed;
 - 22 ○ The existing rock within the rock dam/spillway channel will be reconfigured into
 23 a structural matrix consisting of stone, gravel filter and natural coir fabric mat, to
 24 approximate the natural slope of the Puyallup River through the rock
 25 dam/spillway channel, resulting in a slope of approximately 1.7% to 2%, as

depicted on Attachment C, Drawing Sheets 5 and 6.

- On the downstream end of the rock dam/spillway channel, at the downstream end of the concrete abutment between the wooden spillway and the rock dam/spillway, rock and gravel will be placed, underlain with all-natural coir fabric mat, in the configuration shown in Attachment C, with a slope of 1V:3.5H to 1V:5H, as depicted on Attachment C, Sheet 4. Once this portion of the stone scour protection is constructed, it will be buried with native riverbed gravel material;
- At the upstream end of the rock dam/spillway channel, Electron will use native materials to construct a coffer dam for the period of rock dam/spillway removal, and no later than September 15, 2024, a pilot channel will be cut through the coffer dam, allowing it to be exposed to, and eroded by, fall and winter flows;
- At the downstream of the rock dam/spillway channel, Electron will use native materials to construct a coffer dam for the period of rock dam/spillway removal, and no later than September 15, 2024 will entirely disperse or remove the downstream coffer dam;
- No grout or cement will be proposed in the permit application or used in the work to be performed during the summer of 2024;
- Electron will minimize use of new rock, with new quantities of rock not to exceed 2,000 cubic yards;
- No plastic, geotextile, or fabric materials will be proposed in the permit application or used in the work to be performed during the summer of 2024.
- Electron may request, as a permit option, relocation of removed sheet pile to the downstream end of the concrete abutment, with the requirement that the sheet pile must be completely buried and covered with rock. If the sheet pile becomes exposed, it will be

cut down to below the natural river bed.

- Electron will implement the sheet pile option only if the Army Corps of Engineers agrees that it can be permitted under a Nationwide Permit and all permitting agencies agree such work can be permitted and completed in the July 15 to September 15, 2024 time period.
- The evidentiary hearing on the Motion for Contempt is hereby continued until May 17, 2024. If, by May 17, 2024, the parties are unable to confirm to the Court that Electron has complied with this Order and/or are unable to confirm that the removal of the rock dam/spillway as contemplated in the Remedies Order and this Order can be permitted and completed in the July 15 to September 15, 2024 time period, then the evidentiary hearing on the Motion for Contempt requesting the Tribe's original remedies proposal be implemented, will resume and be completed on May 17, 2024.

DATED: April 26, 2024.

Respectfully submitted,

/s/ Janette K. Brimmer

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THE PUYALLUP TRIBE OF INDIANS

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Attorneys for Defendants

IT IS SO ORDERED this 26th day of April 2024.



John C. Coughenour

UNITED STATES DISTRICT JUDGE